

5 OCT 1982

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were incorporated under the non-profit laws of the State of [REDACTED] on [REDACTED]. You are organized for charitable and religious purposes.

The information submitted indicates that your primary activity is operating a store where items of a religious nature are sold. You sell such things as Bibles, religious greeting cards, gospel pamphlets and booklets, gospel tracts, Bible covers, religious jewelry, various children's items with scripture, pens and pencils with scripture, reference books, gospel recordings, and miscellaneous gift items. You sell on both a retail and wholesale basis.

In [REDACTED], your first year of operations, your gross receipts from sales were \$[REDACTED] and the gross profit from such sales were \$[REDACTED]. During the period, your expenditures were \$[REDACTED] and the net profit from operations was \$[REDACTED]. You made contributions of \$[REDACTED] to two religious organizations and the balance of your expenditures were for operating expenses. You indicate that the profits are necessary in order to increase and improve inventory with a view of providing more and better reading materials. You had no receipts from other sources and you will not conduct any fund-raising program.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(3) Corporations, *** fund, or foundation, organized and operated exclusively for religious, charitable, scientific, *** literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation

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does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(c)(1) Primary activities. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

Revenue Ruling 60-351, 1960-2 cumulative bulletin 169, held that a non-profit corporation that published and sold a foreign language magazine did not qualify for exemption under section 501(c)(3) of the Code. The ruling states that, "although the magazine is printed in a foreign language and may provide some materials unlike those in other magazines, there is no showing that the operations fulfill a corporate role which in and of itself is exclusively charitable, scientific, literary or educational. The mere fact that the corporation is not organized for the profit of its members does not remove the necessity for the corporation to bear its burden of proof to a right of exemption."

The retail sale of goods is normally a business activity. An activity that would be a business if carried on by a commercial organization may nevertheless, in some circumstances, be the necessary means of achieving exempt purposes. Selling religious books and materials may further an exempt purpose but it may also be a business. An activity is characterized as a business or as an exempt activity according to its purpose. The existence of an operating profit from operations is not conclusive to a business purpose although it is one factor that is considered. In one case, a nonprofit organization controlled by a church to print and sell educational and religious material to the church's parochial school system was held to be exempt even though it made a profit. Since the source of its profits were components of its parent organization, the existence of profit did not adversely affect exemption. Revenue Ruling 68-26, 1968-1 Cumulative Bulletin 272.

On the other hand, another case places great weight on the existence of an operating profit and a commercial pricing pattern. A publisher of religious books that had an operating profit lost its exemption. The court conceded that the publishing furthered an exempt purpose, but held that there was also a substantial business purpose. Fides Publishers Association V. U.S. 260 F. Supp. 924 (N.D. Ind. 1967). A corporation engaged in the publication and sale of religious periodicals, books, and supplies to churches of a particular denomination and to individuals, was

held to be operated for the primary purpose of carrying on a trade or business, and was not entitled to exemption. In this case profits were out of proportion to the exempt purposes that were advanced, and large accumulated income was considered further evidence of a dominant commercial purpose. Scripture Press Foundation v. U.S., 285 F. 2d 800 (ct. cl. 1961)

Based on the information submitted, it is held that you are operating a business and not furthering an exempt purpose. You are selling religious materials in much the same way as any commercial enterprise. Your pricing practices are such that you are earning a relatively substantial profit in relation to sales and the profit will be used to increase the size of your business. There is no indication that you are furthering religious or charitable purposes. Your contributions to the two churches are not significant enough to justify exemption. As indicated in revenue ruling 60-251, there is no showing that your retail sales in and of themselves promotes a religious or charitable purpose and the fact that you are not organized and operated for the profit of your members does not qualify you for tax-exempt status.

Accordingly, it is held that you do not qualify for exemption from Federal income tax under section 501(c)(3) of the Code. You are required to file an annual federal income tax return on Form 1120.

Contributions, bequests, legacies, devises, transfers, or gifts to you or for your use are not deductible under sections 170, 2053, 2106, and 2522 of the code.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

[REDACTED]

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

Sincerely,

[REDACTED]
District Director

Enclosures:
Form 6018
Publication 892